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13 *Toshiba America, Inc., Toshiba America*

14 *Information Systems, Inc., Toshiba America*

15 *Consumer Products, L.L.C., and*

16 *Toshiba America Electronic Components, Inc.*

17 UNITED STATES DISTRICT COURT
18 NORTHERN DISTRICT OF CALIFORNIA
19 (SAN FRANCISCO DIVISION)

20 IN RE: CATHODE RAY TUBE (CRT)
21 ANTITRUST LITIGATION

22 Case No. 07-5944 JST
MDL No. 1917

23 This Document Relates to:

24 CERTAIN DIRECT ACTION
25 PLAINTIFFS' ACTIONS

26 **DECLARATION OF JONATHAN C.
27 BLACK II IN SUPPORT OF TOSHIBA
28 DEFENDANTS' ADMINISTRATIVE
MOTION TO FILE DOCUMENTS
UNDER SEAL PURSUANT TO CIVIL
LOCAL RULES 7-11 AND 79-5(d)**

29 DECLARATION OF JONATHAN C. BLACK II IN SUPPORT OF
TOSHIBA DEFENDANTS' ADMINISTRATIVE MOTION TO FILE
30 DOCUMENTS UNDER SEAL PURSUANT TO CIVIL LOCAL RULES 7-11 AND 79-5(d)

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1 I, Jonathan C. Black II, hereby declare as follows:

2 1. I am an attorney with the law firm of White & Case LLP, counsel for
3 Defendants Toshiba Corporation, Toshiba America, Inc., Toshiba America Information
4 Systems, Inc., Toshiba America Consumer Products, L.L.C., and Toshiba America Electronic
5 Components, Inc. (collectively, the “Toshiba Defendants”). I make this declaration in
6 support of the Toshiba Defendants’ Administrative Motion to File Documents Under Seal
7 Pursuant to Civil Local Rules 7-11 and 79-5(d).

8 2. Except for those matters stated on information and belief, which I believe to be
9 true, I have personal knowledge of the facts set forth herein and, if called upon, could and
10 would competently testify thereto under oath.

11 3. On June 18, 2008, the Court approved a Stipulated Protective Order (Dkt. No.
12 306) in this matter.

13 4. The Toshiba Defendants and other parties to this litigation have produced in
14 this action certain documents and information designated as “Confidential” and “Highly
15 Confidential” pursuant to the Stipulated Protective Order.

16 5. On November 5, 2015, the Toshiba Defendants filed an administrative motion
17 to seal the following materials pursuant to Civil Local Rules 7-11 and 79-5(d):

- 18 a. Exhibit 4 to the Declaration of Matthew Frutig in Support of Toshiba’s
19 Objections to Special Master’s Recommended Order Dated October 21,
20 2015 Re Plaintiffs’ Motion to Compel Supplemental Discovery from
21 Toshiba and Panasonic (“Frutig Declaration”), which are the Toshiba
22 Defendants’ Objections and Responses to the IPPs’ First Set of
23 Interrogatories to Defendants, dated September 5, 2014, (“Responses to
24 Common Interrogatories”), each designated by the Toshiba Defendants as
25 “Confidential” under the Stipulated Protective Order;
- 26 b. Exhibit 5 to the Frutig Declaration, which are the Toshiba Defendants’
27 Objections and Responses to the IPPs’ Fourth Set of Requests for
28 Production of Documents to Toshiba Defendants, dated September 5, 2014

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1 (“Responses to RFPs”), each designated by the Toshiba Defendants as
2 “Confidential” under the Stipulated Protective Order;

3 c. Exhibit 6 to the Frutig Declaration, which are the Toshiba Defendants’
4 Objections and Responses to the IPPs’ First Set of Interrogatories to
5 Toshiba Defendants, dated September 5, 2014 (“Responses to Toshiba
6 Interrogatories”), each designated by the Toshiba Defendants as
7 “Confidential” under the Stipulated Protective Order;

8 d. Exhibit 7 to the Frutig Declaration, which is the IPPs’ Motion to Compel
9 Interrogatory Responses, dated September 12, 2014 (“September 12, 2014
10 Motion to Compel”), designated by the IPPs as “Highly Confidential”
11 under the Stipulated Protective Order;

12 e. Exhibit 8 to the Frutig Declaration, which is the IPPs’ Motion to Compel
13 Supplemental Discovery Responses, dated September 19, 2014
14 (“September 19, 2014 Motion to Compel”), designated by the IPPs as
15 “Highly Confidential” under the Stipulated Protective Order;

16 f. Redacted portions of Exhibit 9 to the Frutig Declaration, which is the
17 Toshiba Defendants’ Response to the September 12, 2014 Motion to
18 Compel, dated September 26, 2014, specifically attachments 4, 5, and 7 to
19 that response, which are, respectively the Toshiba Defendants’:
20 (i) Responses to Common Interrogatories; (ii) Responses to Toshiba
21 Interrogatories; and (iii) Responses to the DPPs’ First Set of Requests for
22 Production of Documents, each designated by the Toshiba Defendants as
23 “Confidential” under the Stipulated Protective Order;

24 g. Redacted portions of Exhibit 10 to the Frutig Declaration, which is the
25 Toshiba and Panasonic Defendants’ Response to Indirect Purchaser
26 Plaintiffs’ Motion to Compel Supplemental Discovery Responses, dated
27 October 3, 2014, specifically attachments 6, 8, 9, 10, 12, and 15 to that
28 response, which are, respectively: (i) Toshiba Corporation’s Responses to

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1 RFPs; (ii) Toshiba Corporation’s Responses to Common Interrogatories;
2 (iii) Toshiba Corporation’s Responses to Toshiba Interrogatories; (iv) the
3 September 12, 2014 Motion to Compel; (v) Toshiba Corporation’s
4 Supplemental Objections and Responses to Interrogatory Seven of IPPs’
5 First Set of Interrogatories to Defendants; and (vi) excerpts from the
6 transcript of the deposition of Kazutaka Nishimura, dated June 12, 2014,
7 each designated by the Toshiba Defendants or the IPPs as either
8 “Confidential” or “Highly Confidential” under the Stipulated Protective
9 Order;

10 h. Exhibit 11 to the Frutig Declaration, which is the IPPs’ Reply to the
11 Toshiba Defendants’ Response to the IPPs’ Motion to Compel
12 Interrogatory Responses, dated October 3, 2014, designated by the IPPs as
13 “Highly Confidential” under the Stipulated Protective Order; and

14 i. Exhibit 12 to the Frutig Declaration, which is the IPPs’ Reply to Toshiba’s
15 and Panasonic’s Joint Response to IPPs’ Motion to Compel Further
16 Interrogatory Responses, dated October 10, 2014, designated by the IPPs
17 as “Highly Confidential” under the Stipulated Protective Order.

18 6. Because Toshiba’s Objections to Special Master’s Recommended Order Dated
19 October 21, 2015 Re Plaintiffs’ Motion to Compel Supplemental Discovery from Toshiba
20 and Panasonic is not a dispositive motion, “a ‘particularized showing’ under the ‘good cause’
21 standard of Rule 26(c) will ‘suffice[] to warrant preserving the secrecy of sealed discovery
22 material attached to non-dispositive motions.’” *Kamakana v. City & Cnty. of Honolulu*, 447
23 F.3d 1172, 1180 (9th Cir. 2006) (quoting *Foltz v. State Farm Mutual Auto. Ins. Co.*, 331 F.3d
24 1122, 1135 (9th Cir. 2003)). The documents listed in paragraph 5 contain confidential, non-
25 public information about the Toshiba Defendants’ sales practices, business and supply
26 agreements, and competitive positions. They describe relationships with companies —
27 including customers and vendors — that remain important to the Toshiba Defendants’
28 competitive positions. Upon information and belief, publicly disclosing this sensitive

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1 information presents a risk of undermining the Toshiba Defendants' relationships, would
2 cause harm with respect to the Toshiba Defendants' competitors and customers, and would
3 put the Toshiba Defendants at a competitive disadvantage. Accordingly, under Rule 26(c)
4 good cause exists for this Court to maintain the documents listed in paragraph 5 under seal.
5 *Kamakana*, 447 F.3d at 1180 ("A 'good cause' showing under Rule 26(c) will suffice to keep
6 sealed records attached to non-dispositive motions.") (citing *Foltz*, 331 F.3d at 1135).

7 7. Pursuant to Civil Local Rules 7-11 and 79-5(d), this Court's General Order
8 No. 62, Electronic Filing of Documents Under Seal, effective May 10, 2010, this Court's
9 Standing Order Governing Administrative Motions to File Materials Under Seal, dated
10 October 1, 2013, and the Stipulated Protective Order, Exhibits 4-8, 11, 12 in their entirety,
11 and the redacted portions of Exhibits 9 and 10 should be maintained under seal.

12 I declare under penalty of perjury under the laws of the United States of America that
13 the foregoing is true and correct.

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15 Executed this 5th day of November, 2015, in Washington, DC.

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Jonathan C. Black II

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CERTIFICATE OF SERVICE

On November 5, 2015, I caused a copy of “DECLARATION OF JONATHAN C. BLACK II IN SUPPORT OF TOSHIBA DEFENDANTS’ ADMINISTRATIVE MOTION TO FILE DOCUMENTS UNDER SEAL PURSUANT TO CIVIL LOCAL RULES 7-11 AND 79-5(d)” to be electronically filed via the Court’s Electronic Case Filing System, which constitutes service in this action pursuant to the Court’s order of September 29, 2008.



Dana E. Foster

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